SUBCOMMITTEE APPROVES CRIMINAL LAW REFORM

After years of hearings and legislative work, the Senate Judiciary Subcommittee on Criminal Laws and Procedures Oct. 21 unanimously reported to the full Judiciary Committee a bill (S 1) to codify and reform U.S. federal criminal law.

Known as the Criminal Justice Reform Act of 1975, S 1 has drawn heavy criticism from legal groups, members of the press and others who charge it contains repressive provisions concerning such issues as release of national security information, sabotage and wiretapping. *(Box on controversies, p. 2388)*

Supporters of the bill contend that the disputed sections of S 1 represent only a small portion of the bill and should not be allowed to stall the much-needed codification of federal criminal law.

Background

The United States has never had a codified federal criminal law, which is one of the main reasons that S 1 became such a massive project—the bill alone is more than 750 pages and a draft committee report prepared by the Criminal Laws Subcommittee runs more than 1,200 pages. The report speculated that the bill was the longest ever introduced in the Senate.

Federal criminal laws have been written piecemeal over the past 200 years as Congress responded on an individual basis to particular problems. Although many of the federal criminal statutes appear in Title 18 of the U.S. Code, federal criminal laws can be found in almost all of the 50 titles of the code.

The subcommittee's draft report described the situation: "Present statutory criminal law on the federal level is often a haphazard hodgepodge of conflicting, contradictory and imprecise laws piled in stopgap fashion one upon the other with little relevance to each other or to the state of the criminal law as a whole."

Federal criminal statutes were somewhat consolidated and revised in 1877, 1909 and 1948, but corrections were largely limited to eliminating gross inconsistencies rather than developing a real codification. Because a federal criminal code does not exist, the draft report stated, federal law has been interpreted in various ways by federal judges, causing application of different standards of justice throughout the United States.

The subcommittee's report indicated that the movement toward codification of federal criminal law could be traced back to 1952 when the American Law Institute began drafting a model penal code. But actual work on a federal code began in 1966 when Congress in PL 89-801 created the National Commission on Reform of Federal Criminal Laws.

Charged by Congress to make a complete review of the federal criminal justice system and make recommendations for revision and recodification of federal criminal laws, the 12-member commission was chaired by former California Governor Edmund G. "Pat" Brown (D) and aided by a 14-member advisory committee headed by former Supreme Court Associate Justice Tom C. Clark. The three Senate members of the commission were also members of the Criminal Laws Subcommittee: Chairman John L. McClellan (D Ark.), Sam J. Ervin Jr. (D N.C. 1955-75) and Roman L. Hruska (R Neb.).

The Brown Commission submitted its final report to President Nixon Jan. 7, 1971. Brown said at the time of submission that the report only laid the "groundwork for codification and raised the logical issues to be weighed in a view toward reform."

The Criminal Laws Subcommittee held lengthy hearings on the commission's report during 1971 and 1972. These resulted in the introduction of the first version of S 1 by McClellan, Hruska and Ervin on Jan. 4, 1973.

Frank Wilkinson, director of the National Committee Against Repressive Legislation, later described the first S 1 as comprising the dissenting views of the three Senate members of the commission, who had "frequently found themselves outvoted." He quoted the commission's staff director, Professor Louis B. Schwartz, as saying that the senators' bill was "an outright rejection of the [Brown] Commission's basic approach to criminal law."

Nixon Bill

President Nixon commended the Brown commission when it submitted its final report and at the same time established a special criminal code revision unit within the Justice Department to study the Brown report and coordinate with congressional legislative activity. The Justice Department unit wrote a separate bill (S 1400) for the administration which was introdueed March 27, 1973, by McClellan and Hruska. Many of the provisions were similar to those in S 1.

Professor Schwartz reacted to the introduction of S 1400, saying, "The Nixon program contradicts in every respect...the recommendations of the National Commission on Reform of Federal Criminal Laws.... The President has taken a position far to the right of the Senate subcommittee's proposal...widely regarded as 'very tough'...a program of primitive vengefulness."

The Criminal Laws Subcommittee held more hearings during 1973 and 1974 aimed at consolidating S 1 and S 1400. In all, some 8,000 pages of testimony, statements and exhibits were compiled since hearings began in 1971.

Hearings were completed in August 1974, and on Jan. 15, 1975, a revised S 1 was introduced in the 94th Congress by a bipartisan group of sponsors including McClellan and Hruska, Majority Leader Mike Mansfield (D Mont.) and Minority Leader Hugh Scott (R Pa.).

The subcommittee draft report stated that the new version of S 1 reflected the comments and criticisms expressed during the extensive hearings and also resolved the differences between the two original bills. The report termed S 1 an extension and improvement over the earlier proposals.

Is S 1 The Proper Vehicle For Reform?

Most critics and supporters of S 1 agree that codification of federal criminal law is necessary. However, they disagree over whether the subcommittee's version of S 1 should be the vehicle for change.

There have been charges that S 1 is a repressive bill containing many provisions detrimental to American freedom. Critics have insisted the bill is too cumbersome to change and should be scrapped.

Defenders counter that the bill is the product of many years of careful work and is still open to amendment. They say many of the controversial items in the bill are not new, but merely codification of existing law.

"I cannot associate myself with a measure which has become a symbol of repression to so many."

—Sen. Birch Bayh

PRO: Giant Step Forward

Supporters of S 1 argue that it represents a giant step over current law.

Criminal Laws and Procedures Subcommittee Chairman John L. McClellan (D Ark.) told the Senate Oct. 21 that S 1 had been "carefully drafted in an attempt not only to safeguard the public welfare but also to fully preserve individual freedoms."

McClellan admitted that some of the subject areas of the bill elicited "strong and persistent controversy," but welcomed that because "it is in the context of competing points of view that more enlightened legislative decisions are made."

In an interview with Congressional Quarterly, another sponsor of the bill, Roman L. Hruska (R Neb.), was perplexed by the critics of S 1. "What is their alternative?", Hruska asked, "Would they keep the current unsatisfactory state of affairs?" Hruska had said earlier, "Those who would defeat the bill would have us return to present law, with its outdated, inadequate, irrational, unjust and piecemeal disarray."

Hruska told Congressional Quarterly, "Some say we have to start anew and write a whole new code—but any new code will still have to be handled as this one was."

Some critics have also suggested that the codification be divorced from the controversial national security items. Hruska said it won't work. "The purpose of a code," he said, "is to consider everything as a unit. If we do it piecemeal, we just end up with the unsatisfactory situation that now prevails."

Both Hruska and McClellan have discounted arguments that the bill is unamendable because of its unwieldy size. McClellan said Oct. 21, "The bill...is in no way sacrosanct. I fully anticipate...that a number of improving amendments...may well be adopted during full Judiciary Committee consideration."

University of Pennsylvania law professor Louis B. Schwartz, who was staff director of the Brown commission and has many reservations about the current S 1, was quoted as saying, "Give me a week and I can make the entire bill perfectly acceptable."

S 1 was "carefully drafted in an attempt not only to safeguard the public welfare but also to fully preserve individual freedoms."

—Sen. John L. McClellan

CON: Repressive Legislation

The American Civil Liberties Union mailed out a special 12-page booklet with the words "Stop S-1" boldly printed on the front. "The bill's alleged purpose is to revise and reform the United States Criminal Code," the booklet stated, "but the real purpose of important parts of the bill is to perpetuate secrecy and stifle protest." An ACLU newsletter added, "The cost [of codification] is too high—passage of S 1 would turn back the civil liberties clock to a time before the Warren Court."

Birch Bayh (D Ind.), one of the original sponsors of the bill, withdrew his sponsorship Aug. 19: "At this moment in our history when I believe we must rededicate ourselves to the preservation of those basic rights which have kept America and Americans free," Bayh said, "I cannot associate myself with a measure which has become a symbol of repression to so many."

Professors Vern Countryman of Harvard Law School and Thomas I. Emerson of Yale Law School made a joint statement calling the enactment of S 1 "an unparalleled disaster for the system of individual rights in the United States."

The two professors claimed the bill was unamendable because it had too many individual parts. "It would be naive to believe that these countless provisions could be restructured and redrafted, one by one, through the procedure of motion to amend, amendments to the amendment, debate, and vote, either in committee or on the Senate floor," the two said. "Long before such a process could be completed the pressures would be irrestible to make a few changes and let the rest go through."

Norval Morris, dean of the University of Chicago Law School, raised the question of separating the technical criminal law from the controversial national security issues. "It seems to me," Morris said, "that only if they are severed do we have any chance of doing this other modest, non-dramatic thing that is so important—defining a decent criminal law for the federal system. We're not decent now."

However, throughout 1975 the bill was widely criticized by lawyers and reporters, among others, who charged that it was repressive and endangered First Amendment freedoms.

The bill was described in terms ranging from "dangerous" to "an unparalleled disaster for the system of individual rights in the United States." Critics were also concerned that it could not be effectively amended on the Senate floor because of its size and complexity.

Structure of S 1

S 1 would replace Title 18 of the United States Code, which is concerned with crimes and criminal procedure.

Dennis C. Thelen, assistant counsel to the subcommittee, explained the goal of S 1: "to have a modern, uniform and rational criminal code...by eliminating outdated provisions, bringing in significant criminal provisions from other titles and transferring minor provisions back to other titles."

The subcommittee's draft report explained that the new organization would include such changes as a codification of general defenses, a common definition of terms, a grouping of offenses by subject areas rather than by alphabet, and an organized sentencing system graded in proportion to the severity of the crimes. One main goal in drafting the bill, the report continued, was to use as much simple English as possible, avoiding verbose and technical language.

The bill, as reported by the subcommittee, contained the following three titles:

- Title I, consisting of the actual codification of federal criminal law, including offenses, sentences and a reorganization and revision of the administrative and procedural sections of Title 18. It also would include the rules of procedure for the trial of minor offenses before U.S. magistrates and 1975 changes made in the federal rules of criminal procedure. *(Final action, Weekly Report p. 1667)*
- Title II, consisting of technical and conforming amendments for transferring important criminal provisions into Title 18 from other titles of the U.S. Code, as well as moving minor provisions out of Title 18.
- Title III, consisting of general provisions, including a severability clause providing that any provision found to be invalid would not affect the validity of the remaining provisions. The title would make S 1 effective one year after the date of enactment.

Title I

The first title, consisting of the actual codification of U.S. federal criminal law, contains the heart of the bill. As approved for the full committee, it contains a total of 41 chapters, divided into five parts: general provisions and principles, offenses, sentences, administration and procedure and ancillary civil proceedings. To leave room for future additions, the chapters are not numbered consecutively.

General Provisions and Principles

As explained by the subcommittee's draft report, the general provisions and principles section of S 1 would provide much greater detail than is currently found in federal statutes on such matters as jurisdiction, culpability, complicity and bars and defenses.

The section would begin with a statement of general purpose for the proposed federal criminal code: "to establish justice in the context of a federal system, so that the people of the nation may be secure in their persons, property and other interests...." There is no such statement in the present Title 18.

Jurisdiction (Chapter 2). As explained in the draft report, one of the key changes made by S 1 would affect the question of federal jurisdiction: when the United States government has the power to enforce its laws, as compared to when the separate states have power to enforce their laws.

In most current federal statutes, the report said, the basis for federal jurisdiction is included in the offense along with the basic criminal misconduct. As a result, too often the focus of the prosecution is on the jurisdictional element of the crime (whether the federal government has the power to prosecute) rather than the criminal offense itself (whether the person actually stole the object, for example). S 1 would separate the two components: offenses would be defined in terms of the misconduct (i.e., stealing a motorcycle), and the terms under which the United States is entitled to prosecute (when the motorcycle is moving in interstate commerce) would be defined separately.

S 1 would also retain the concept of ancillary, or "piggyback," jurisdiction recommended by the Brown commission but would restrict its application in response to complaints that the commission's approach would expand federal jurisdiction too much at the expense of the states. Under the commission's recommendation, federal jurisdiction could have been asserted over any criminal conduct which occurred in connection with a federal crime.

The second part of chapter 2 would explain the second aspect of jurisdiction: that power which the United States possesses by virtue of being a sovereign nation. This section would define the general, special and extraterritorial jurisdictions of the United States.

Culpability (Chapter 3). In a second striking departure from existing law, S 1 would organize and consolidate the proliferating number of levels of culpability, or specific mental states, that could be present when committing an offense. Under present law, some 79 undefined different terms are used to describe such states of mind. S 1 would reduce that number to four defined mental states: intentional, knowing, reckless or negligent. These four would be applicable throughout the entire code.

Complicity (Chapter 4). As explained in the draft report, this chapter would establish the general principles whereby one individual or organization could be held criminally liable for the conduct of another. While related to the concepts of conspiracy, the report continued, chapter 4 would not define any offenses *per se* but would only define the offenders.

The chapter would include the definitions of the liability of an accomplice, liability of an organization for the conduct of an agent, and liability of an agent for the conduct of an organization.

Bars and Defenses to Prosecution (Chapter 5). This chapter would codify for the first time general defenses and bars to prosecution. Defenses would include, but not be limited to, duress, entrapment, mistakes of law or fact, insanity, intoxication, official misstatement of law, and protection of persons and property by use of force. The two main bars to prosecution would be time limitations and immunity of the defendant.

Controversial Espionage, Sabotage, Insanity, Death . . .

The Criminal Justice Reform Act of 1975 (S 1) has created an uproar among lawyers, newsmen and civil libertarians, many of whom charge it has broadened current law to weaken American freedoms, especially the First Amendment freedoms of free speech and a free press.

The bill, resulting from four years of work by the National Commission on Reform of Criminal Laws, followed by four years of hearings and drafting by the Senate Judiciary Subcommittee on Criminal Laws and Procedures, would revise and codify for the first time all the federal criminal statutes that are currently scattered throughout various titles of the U.S. Code.

Sections that have been disputed relate to espionage and release of classified information, insanity, the death penalty and other sentencing, use of deadly force, marijuana offenses, contempt, criminal conspiracy and solicitation and sedition.

Following are details of some of the most controversial disputes:

Espionage and Related Offenses

This section (Section 1121) of S 1 has probably drawn the most criticism. Opponents charge it would in effect create a National Secrets Act, limiting what Americans can learn about government policies and practices through such offenses as disclosing and mishandling national defense information, and disclosing and unlawfully obtaining other classified information. They have said these provisions would punish such situations as Daniel Ellsberg's release to *The New York Times* of the Pentagon papers.

The American Civil Liberties Union has charged that the espionage provision defines that crime in the broadest terms, by seeking to punish anyone who communicates national defense information to a foreign power "knowing" that it could be used to the prejudice of the safety or interest of the United States.

It is the use in S 1 of the word "knowing" that has caused much of the criticism. Opponents charge that it is more repressive than current law, which would punish anyone who discloses information "with an intent" that it be used to injure the United States.

Sen. John L. McClellan (D Ark.), the bill's chief sponsor, responded Oct. 21 that current law also provides for prosecution if the individual had "reason to believe" the information could be used to injure the United States. McClellan said he thought it would be more difficult to prove a defendant acted "with knowledge" than "with intent" and even harder to prove "knowledge" than "reason to believe."

Sen. Roman L. Hruska (R Neb.) has proposed an amendment which he says would narrow these provisions by requiring intention to prejudice the safety of the United States or its armed forces. Hruska said his amendment would also narrow the definition of national defense information to cover only critical or vital sensitive information. The ACLU had opposed S 1's definition of such information, charging it encompassed "a vast array of information limited only by the imagination of the prosecutor."

Hruska said his amendment would also expand protections currently only in Section 1124 which exempted the media from accomplice and conspirator liability unless it also had the intent to prejudice U.S. safety as opposed to a motive to inform.

Section 1124, which relates to disclosing classified information, has also been attacked by the ACLU as containing the most serious of the espionage provisions, since "it promises to cut off circulation of information relating to foreign and domestic policy decision-making and programs." The danger arises, the ACLU stated, "since government officials classify the same way they breathe—often and thoughtlessly."

Sen. Birch Bayh (D Ind.) has also expressed concern with this provision and has proposed an amendment that he said would completely replace Sections 1121-1124, dealing with espionage and disclosure of national defense and classified information.

Bayh's amendment was designed to precisely and narrowly define the sort of information to be covered. It would make it an offense to transfer any classified information directly to a foreign power or agent with an intent to injure the United States. The most serious offense under this amendment would be transmission of vital defense secrets, which Bayh defined as cryptographic information, operating plans for military combat operations, information regarding actual operation methods of weapons systems and restricted atomic energy data. Bayh said his amendment would also adopt an additional requirement taken from the Supreme Court's decision in the Pentagon Papers case that the information's disclosure must pose a "direct, immediate and irreparable harm to the security of the United States."

Sabotage

Frank Wilkinson, director of the National Committee Against Represive Legislation, attacked S 1's sabotage provisions (Section 1111), saying that the language "could make every public demonstration, no matter how peaceful and orderly, subject to potential criminal sanctions." The ACLU stated that under the vague terms of the provision, anti-Vietnam war demonstrators who "interfered with" public transportation, could have been prosecuted for the major felony of sabotage.

Hruska has proposed an amendment that he said would aim to punish only more dangerous conduct and would exclude indirect, insubstantial and non-physical obstructions.

Insanity

Arguments have arisen over S 1's definition of the insanity defense, which under current law has been court defined and therefore variable throughout the United States. As described by University of Pennsylvania Law Professor Louis B. Schwartz, existing law

. . . Penalty Provisions Draw Fire From Critics of S 1

generally "provides that an accused person who perpetrates a criminal act while mentally ill shall be acquitted if, as a result of the mental illness, he was unable to refrain from offending."

S 1, on the other hand, would allow insanity as a defense only if the insanity caused a lack of "the state of mind required as an element of the offense charged. Mental disease or defect does not otherwise constitute a defense."

The Judiciary Committee explained in a memorandum that previous approaches to the insanity defense have frequently resulted in swearing contests between psychiatrists on the defense side and those on the prosecution side. The memorandum explained that the approach of S 1 would focus on such a question as, "Did the defendant intend to hurt the victim?" rather than on the question, "Could he tell right from wrong and could he control his behavior?"

The American Bar Association is opposed to the S 1 version of the insanity defense and Frank Wilkinson described it as an important regression from existing law. As Schwartz explained: "Deterrent penalties of the law should not be applied to individuals who, suffering from mental illness, are not deterrable." Sen. Frank E. Moss (D Utah) has submitted an amendment that would eliminate a definition of the defense of insanity from S 1.

Death Penalty

Some critics have opposed the inclusion in S 1 of provision for capital punishment for certain classes of murder, treason, espionage and sabotage on the general grounds that capital punishment is wrong. The ACLU continued its opposition to the death penalty as "cruel and unusual punishment in violation of the Constitution...that has been used to perpetuate racial and economic discrimination."

Although the draft committee report written by the Criminal Laws Subcommittee claimed that the capital punishment provisions of S 1 were drafted to follow the guidelines of the 1972 Supreme Court decision in *Furman v. Georgia*, some opponents are not convinced.

S 1 would specify the types of murder for which the death penalty is applicable, such as murder while the defendant is engaged in espionage, kidnapping or arson, or which is committed in a "specially heinous, cruel, or depraved manner."

Professor Schwartz explained that the 1972 court decision held that "capital punishment is unconstitutional when imposed under loose discretionary statutes that permit arbitrary selection of persons to be executed." Schwartz said that opponents of S 1 contend that such criteria as heinous, cruel and depraved are too vague to meet the constitutional requirements set up by the Supreme Court.

Sen. McClellan responded to opponents of the death penalty provisions on the Senate floor Oct. 21. At that time he reiterated that the provisions of S 1 did establish procedures conforming to the Supreme Court decision. He reminded opponents of capital punishment that S 1 contained provisions similar to a bill (S 1401) which passed the Senate in 1974 by a vote of 54 to 33. *(1974 Almanac p. 298)*

Wiretapping

Although some critics have opposed the wiretapping provisions of S 1 on grounds that they would broaden the government's authority to wiretap for up to 48 hours without a court order, McClellan Oct. 21 pointed out that this provision is actually already part of current law.

Other opponents realize it is already on the books and would like to get rid of it. The ACLU said the provision "makes a mockery of the requirement for a warrant specifying in advance the offense of which evidence is ostensibly sought."

Objecting to the provision, Los Angeles criminal lawyer Harrison Hertzberg explained that certain law enforcement officers can wiretap without a warrant as long as they have permission from the attorney general. "After he gets the information he wants through a wiretap he can apply for judicial authority to do what he has already done. If he does not get the authority, he has illegally obtained evidence. But he already has the information he may need to further an arrest or prosecution."

Hruska strongly defended wiretapping in an interview with Congressional Quarterly, saying, "There is no other way to attack organized crime."

Entrapment

Wilkinson described the S 1 provision on entrapment as permitting conviction of defendants for committing crimes which they were induced to commit by the improper pressures of police agents. Wilkinson objected that the provision put the burden of proof on the defendant to show that he was "not predisposed" to commit the crime.

Norval Morris, dean of the University of Chicago law school, opposed S 1 on this issue because he said the approach had two evils: "It makes the arrested person highly vulnerable to abuse of power by the police, and it operates in an area of criminality where many of us think certain kinds of actions should not be crimes, since entrapment occurs most typically when criminal law overreaches into the area of morals."

In Morris' view, "A system of law that sets up this pattern of luring people into crime and then convicting them for it because of their 'predispositions' or past convictions is wholly objectionable. One must make powerful arguments to get rid of that in S 1."

Both Moss and Bayh have submitted amendments on the entrapment issue. Moss said his amendment was based on the law enforcement officer's conduct and the probable consequences of that conduct. Bayh explained that his amendment would give principal significance to the inducements of the government. He said the issue would be framed in the objective terms of whether persons at large who would not otherwise have done so would have been encouraged by the government's actions to engage in crime.

One of the key changes in this area, the draft report explained, would be establishment of a federal definition of the insanity defense. Until now, formulation of this defense has been left to the courts, the report continued, and this approach has resulted in the use of at least five different types of insanity defense throughout the federal courts. The report stated that S 1 would provide for a defense of insanity only if the defendant suffered from a mental disease or defect which negated the state of mind identified as an element of the offense. *(Box on controversies, p. 2388)*

Offenses

Part II of S 1, containing nine chapters, would define criminal offenses. Though primarily a recodification of Title 18 of the U.S. Code, the offenses section would also bring together and identify other major criminal offenses against the United States that are currently scattered throughout other titles of the present code.

The Judiciary Committee explained that the definition of all offenses would be structured so that the reader would know the elements of the offense, the requisite state of mind (culpability), the circumstances under which the federal government can prosecute the offender (jurisdiction) and the sentence for violation of the offense (grading).

Offenses of General Applicability (Chapter 10). The first chapter of offenses, the draft report stated, would consist of three offenses in which the ultimate objective of the actor in each case is to commit some other crime. As the report explained, S 1 would provide for the first time a federal attempt statute of general applicability, thus making it an offense to attempt to commit any federal crime. Also included in the chapter would be offenses of criminal conspiracy and solicitation. As explained by the committee, the conspiracy provision would generally reflect current law, while a general offense covering solicitation to commit a federal crime would be a new addition to the code.

Offenses Involving National Defense (Chapter 11). Treason, sabotage, espionage and atomic energy offenses would comprise this section. It would for the most part codify existing statute and case law.

Treason, the offense uniquely defined by the Constitution, would continue to consist of rendering assistance to foreign enemies waging war against the U.S. or engaging in domestic rebellion, the draft report said. Related offenses would include instigating overthrow or destruction of the government and engaging in para-military activity, which would be a new addition to current law.

The sabotage provisions are described by the subcommittee's draft report as being offenses, short of treason, that affect the security of the United States by physically obstructing national defense, preparation for war or the conduct of war. Related offenses would include impairing military effectiveness by a false statement, evading military or alternative civilian service, obstructing military recruitment, and inciting mutiny or desertion.

The draft report described the espionage offenses as the unauthorized collection and disclosure of the nation's military secrets, particularly to foreign countries. Although the espionage provisions have drawn fire from opponents of S 1, the report stated that "the contours of current law have for the most part been retained." *(Sabotage and Espionage, Controversy box, p. 2388)*

Related offenses would include disclosing and mishandling national defense information, and disclosing and unlawfully obtaining classified information.

Atomic energy offenses were not redefined for S 1, the subcommittee report stated, but the most serious offenses were simply transferred from Title 42 of the U.S. Code, and include dealing in "special nuclear material" and atomic weapons.

International Affairs Offenses (Chapter 12). The first part of this chapter would include offenses affecting international relations. As explained by the subcommittee's report, the offenses are based on the theory that nations are obligated to see that their territory is not used as a base for military operations against peaceful nations and that strict neutrality be maintained when two other foreign nations are at war. "If the United States does not protect the interests of other nations in this regard," the report said, "they will not protect ours."

Related offenses would include militarily attacking a foreign power, conspiracy against a foreign power, entering or recruiting for a foreign armed force, causing the departure of a vessel or aircraft against the interest of neutrality, engaging in an unlawful international transaction, and disclosing a foreign diplomatic code.

The second section of this chapter, the draft report stated, would consolidate existing offenses designed to assist government regulation of immigration, citizenship and foreign travel by citizens. The report said that efforts were made to stay within existing policy and exclude elements of offenses that could be covered by broader offenses such as bribery and perjury.

Related offenses would include unlawfully entering the United States as an alien, smuggling an alien into the United States, hindering discovery of an illegal alien and fraudulently acquiring or improperly using evidence of citizenship and passports.

Government Processes Offenses (Chapter 13). As reported, this lengthy chapter of S 1 would be divided into six subchapters and would concern offenses that constitute obstructions of government functions.

The first subchapter, general obstructions of government functions, would make such obstructions criminal if they were engineered by any manner of fraud, by physical means, or by impersonation of a government official. One key change, the draft report stated, would be the creation of a substantive offense of defrauding the government. This was made in response to criticism that current law contains an offense of conspiracy to defraud the government, but no offense of actually defrauding the government.

Obstructions of law enforcement would be included in the second subchapter. Such offenses as hindering law enforcement (assisting others to avoid capture or prosecution), bail jumping, escape, providing or possessing contraband in a prison, and flight to avoid prosecution or appearance as a witness would be grouped together, the report said, since such conduct obstructed law enforcement efforts.

The third subchapter would consist of obstruction of justice, including offenses such as witness bribery, corrupting, tampering with, or retaliating against a witness or informant, tampering with physical evidence, communicating with a juror, monitoring jury deliberations and demonstrating to influence a judicial proceeding.

The fourth subchapter, contempt offenses, would consolidate in five sections a number of contempt offenses that are currently found in several different titles of the U.S. Code. As explained by the draft report, offenses in this subchapter would deal only with criminal contempt, although

the availability of simultaneous or alternative civil contempt proceedings would be left unimpaired. The report explained the difference between the two forms of contempt: if the purpose of the punishment is remedial (designed to induce compliance with a court's order or decree), the contempt offense would be civil; if the punishment is punitive (intended to vindicate the authority of the court), the contempt is criminal.

In addition to the offense of criminal contempt, related offenses would include failing to appear as a witness, refusing to testify or to produce information, obstructing a proceeding by disorderly conduct and disobeying a judicial order.

The fifth subchapter—perjury, false statements and related offenses—would be concerned with making false statements, both under oath and otherwise, in an official proceeding or government matter, and altering, destroying or concealing government records.

In addition to the official offense of perjury, which was described by the report as falsely making or affirming a material statement (a statement important enough to affect the outcome of the proceeding), a new offense of false swearing was proposed by the subcommittee. This offense would cover instances of deliberate lying under oath without regard to the materiality of the statement. Related offenses would be making a false statement and tampering with a government record.

The subcommittee's draft report indicated that the last subchapter of chapter 13 would consolidate a number of bribery and conflict-of-interest offenses involving public officials, as well as offenses of influencing or retaliating against public officials by force or intimidation. Specific offenses would include bribery, graft, trading in government assistance, trading in special influence, trading in public office, and tampering with or retaliating against a public servant. The offense of speculating on official action or information would be a new addition to federal law, the report stated. It would punish a federal official's use for financial gain of inside information acquired during government service.

TAXATION OFFENSES

Taxation Offenses (Chapter 14). The first subchapter of chapter 14 would concern internal revenue offenses. As explained in the draft report, the offenses were written "so as to retain, when coupled with other generally applicable offenses, the breadth and effectiveness of sanctions currently found in the Internal Revenue Code of 1954" and other provisions of Title 18. Such action, the report said, was recommended by the Brown Commission, the Justice Department and the Internal Revenue Service.

The second subchapter would consist of customs offenses. The first, smuggling, would involve the unlawful introduction of objects into the United States or the evasion of customs duties. The subcommittee's report said that a separate offense of trafficking in smuggled property, without counterpart in current law, was created to show a distinction between the professional (usually the "fence") who deals regularly in smuggled property, and the individual who has bought or received smuggled goods for his personal use.

Individual Rights Offenses (Chapter 15). Offenses involving civil rights would comprise the first subchapter of chapter 15. The draft report stated that the great bulk of civil rights legislation in the United States [illegible] such as maiming, aggravated battery, battery,

use of the administrative process and civil injunctions fo enforcement, rather than providing criminal sanction This section of S 1 would consist of civil rights provisions o the U.S. Code that contain criminal penalties. Offense would include interfering with the civil rights of a perso including non-citizens; interfering with civil rights unde pretense of carrying out the law, whether or not the accuse is an actual officer of the state; interfering with receiving federal benefit or participation in a federal activity such a jury duty; unlawful discrimination, including housing in timidation, with the addition of sex as grounds for dis crimination; interfering with speech or assembly related t civil rights activities.

The second subchapter would concern offenses involv ing political rights. As explained by the draft report offenses in this section would deal specifically with the elec toral process and the right to vote, rather than the mor sweeping civil rights protection of the preceeding section Offenses would include obstructing an election, registratio for an election, or a political campaign. The latter offense the report stated, arose from abuses in the 1972 presidentia campaign. The report said that the offense would exten federal jurisdiction to any crime committed during a federal campaign with the intent to influence the outcom of a federal election. The statute would also punish "dirty tricks" perpetrators who publish or distribute anonymous or erroneous material concerning a federal candidate.

Other related offenses would include granting o withholding a federal benefit to influence a person's vote misusing authority over federal personnel to obtain political contributions, soliciting a political contribution by a federal employee or in a federal building, and making a political contribution as an agent of a foreign principal.

The last subchapter would consist of offenses involving privacy, such as wiretapping. According to the draft report, the provisions would give protection against interference with different forms of private communications, including interception of written correspondence and electronic surveillance of private conversations.

Related offenses would include trafficking in eavesdropping devices and revealing private information submitted for a government purpose.

Offenses Against the Person (Chapter 16). This chapter would include five separate categories of offenses against the person, with little change from existing law, the report stated.

The first subchapter would consist of homicide offenses, including murder, manslaughter and negligent homicide. The draft report indicated that the most significant difference from existing law in this subchapter would be the consolidation of first and second degree murder as proposed by the Brown commission. Such an approach, the report stated, would eliminate the use of vague terms such as premeditation, deliberation and malice aforethought, and would allow a more flexible approach to punishment. An additional change from existing federal law, the report explained, would be the uniform grading of homicide offenses regardless of the identity or status of the victim. In many instances under current federal law, the penalty is increased if certain persons, such as the President, are murdered. However, under S 1, murdering a federal official would probably impinge on other federal criminal statutes and therefore result in a pyramid effect of prosecution for additional crimes.

The second subchapter would consist of assault [illegible] such as maiming, aggravated battery, battery,

menacing, terrorizing, communicating a threat and reckless endangerment. Except for the latter offense, the draft report stated, the offenses in this section would all be codifications of the common law crimes of assault and battery appearing in numerous statutes of the U.S. code. The report pointed out that this subchapter would primarily focus on the nature of the actual injury that is caused or threatened, rather than on the defendant's intent or the office of the victim. As in the homicide offenses, S 1 would rely on pyramiding federal offenses rather than provide tougher sanctions based on the victim's status.

The reckless endangerment provision would represent a new offense under federal law, the draft report said, and would provide that a person is guilty of an offense if he engages in conduct that recklessly places or may place another person in danger of death or serious bodily injury. It said the offense could apply to such situations as the operation of dams or nuclear facilities.

Kidnapping and related offenses, all dealing with various forms of restriction of the liberty of other persons, would comprise the third subchapter. In addition to the most serious offense of kidnapping, other offenses would include aggravated and simple criminal restraint. The draft report stated that, as an incentive to keep the victim alive, the death penalty would be imposed only in the case of a conviction of murder in the course of a kidnapping.

The fourth subchapter would consist of offenses involving the seizure of an aircraft or vessel by force, threat, intimidation, or deception. As explained in the draft report, the offenses in this section would be directed at the seizure of property as well as the criminal restraint of individuals.

The subcommittee's report stated that the last subchapter, sex offenses, represented a substantial modification of federal law. A greater number of serious offenses of sexual misconduct were specifically defined, the report said, in order to create appropriate grading distinctions and reduce reliance on the differing coverages of various state laws. S 1 would abolish the discriminatory notion, the report continued, that sexual offenses can only be perpetrated on a female by a male, and sexual offenses under the proposed code would apply without distinction as to the sex of the offender or the victim. Rape, the most serious offense in this section, would no longer require corroboration to prove the offense and the issue of the victim's prior sexual experience would be limited to the question of consent.

Related offenses would include sexual imposition, sexual abuse of a minor or a ward and unlawful sexual contact. The latter offense, which has no counterpart in current federal law, the report explained, would affect those who have not committed a sexual act as previously defined, but who have seriously infringed on the sexual integrity of another person.

PROPERTY OFFENSES

Offenses Against Property (Chapter 17). This chapter would include such offenses against property as arson, burglary, theft, counterfeiting and securities violations. As the draft report explained, chapter 17 probably would provide the best example of the advantages of codification in reducing unnecessarily repetitious offenses. For example, S 1 would bring together some 100 separate theft-related offenses under existing law.

The first subchapter would consist of arson and other property destruction offenses. The report explained that under S 1, arson offenses would continue to follow the shift in emphasis in U.S. common law doctrine from protection of life to protection of property. Related offenses would be property destruction and aggravated property destruction.

The second subchapter would consist of burglary and other offenses concerned with the unauthorized entry or remaining on another person's property. The draft report stated that S 1 would create a general offense of burglary applicable to federal property that is not part of current law. Lesser related offenses would include criminal entry and criminal trespass. The offense of stowing away aboard a vessel or aircraft would be included in this subchapter, the draft report explained, because, although it technically involves a theft of services, it was felt by the subcommittee to be a special form of criminal trespass. A new federal offense of possessing burglar's tools would also be included.

The third subchapter would consist of the related offenses of robbery, extortion and blackmail. The committee explained that the new definition of the extortion offense would close a loophole that allowed labor unions to use extortionate demands as long as their purpose was to achieve a legal goal of collective bargaining.

The fourth subchapter would consist of offenses involving theft and theft-related activities. The first offense the draft report stated, would collect in one section most of the common forms of theft, such as larceny, embezzlement, fraud, etc. The report indicated that the purpose of the section would be to simplify and unify all the many different forms of such conduct now used in current federal law. Related offenses would include trafficking in stolen property (a new offense), receiving stolen property, executing a fraudulent scheme (including a new offense aimed at pyramid sales), bankruptcy fraud, interfering with a security interest and fraud in a regulated industry.

Counterfeiting, forgery and related offenses would comprise the fifth subchapter. The draft report explained that the offenses in this subchapter dealt with false dealings in regard to writings or symbols of value, as well as the falsification or attempted falsification of such materials. The subchapter would also consolidate a large number of counterfeiting and forgery offenses currently found throughout the U.S. Code. Related offenses would include criminal endorsement or issuance of a written instrument and trafficking in a counterfeiting implement.

The sixth subchapter would consist of commercial, labor and sports bribery. The draft report indicated that much of this subchapter could already be found in current law.

The last subchapter, securities, monetary and commodities exchange offenses, would also largely remain unchanged, the subcommittee report stated.

Offenses Involving Public Order, Safety, Health and Welfare (Chapter 18). The first subchapter of chapter 18 would consist of organized crime offenses. Generally, the draft report stated, these offenses would follow current federal law, but a new offense, operating a racketeering syndicate, would be created to punish the leadership of organized crime more severely. Related offenses would include racketeering, washing racketeering proceeds, loansharking and facilitating a racketeering activity by violence.

According to the draft report the second subchapter, concerning drug offenses, would consolidate and, in some instances, recodify the criminal provisions of the Drug Abuse Control Act of 1970. As the commit-

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tee explained, grading distinctions would be dependent on whether or not the drug was an opiate and whether the defendant was a drug trafficker or just a possessor. The most serious offense, trafficking in an opiate (such as heroin), would require a mandatory minimum prison sentence for the first time. However, in this case the committee explained, the possibility of parole would not be precluded unless the judge chose to prohibit it. Related lesser offenses would include trafficking in drugs, possessing drugs and violating a drug regulation. The draft report pointed out that the offense of possessing drugs would significantly reduce the penalty for simple possession of marijuana from up to one year to up to 30 days.

The third subchapter would consist of explosives and firearms offenses, which the draft report said would not significantly change the scope of present federal coverage. Related offenses would be possessing a weapon aboard an aircraft and using a weapon in the course of a crime. As the committee explained, the latter provision would retain mandatory minimum sentences for offenses committed with firearms and would make them applicable to first offenses. Under existing law, mandatory minimums would only apply to second offenses.

The committee explained that the fourth subchapter, riot offenses, would generally reduce existing federal jurisdiction over riots. Offenses would include leading a riot, providing arms for a riot, and engaging in a riot.

The fifth subchapter would consist of gambling, obscenity and prostitution offenses. The draft report stated that in all three instances the scope of the offenses under current law would be curtailed in S 1. Gambling and prostitution, according to the report, would only be federal offenses when carried on as a business. S 1 would emphasize punishment of the operators of such businesses, rather than perpetrators of isolated acts, which would be left to state regulation. The report stated that S 1 would add a definition of obscenity to current statutes, based upon the views expressed in recent Supreme Court decisions. The report emphasized that the scope of S 1 would be limited largely to commercial distribution of obscene material and its distribution to minors. Non-commercial distribution among consenting adults would be left wholly to state law.

The sixth subchapter, the draft report stated, would bring a number of public health offenses into Title 18 that are currently included in Title 21. These offenses would include fraud in a health-related industry and distributing adulterated food.

The last subchapter of chapter 18 would consist of three miscellaneous offenses which the draft report said were inappropriate for inclusion in other parts of the code. The offenses would be disorderly conduct, failing to obey a public safety order and violating state or local laws in a federal enclave.

Sentences

The sentencing structure for the entire U.S. Code would be found in part III of Title I. Despite the wide divergence of views on this subject which the subcommittee heard during the years of hearings, the draft report stated that efforts were made to create a "rational, systematized, comprehensive" system that would achieve the four basic purposes of sentencing: just punishment, deterrence, incapacitation and rehabilitation. In addition, the report stated that the subcommittee sought to devise a sentencing system with enough direction to guide the use of sufficient discretion by the judiciary so that both the needs of the individual and the requirements of society would be met. The system that would be established in S 1 would include probation, fines and imprisonment. The death sentence would also be available for specified offenses.

Imprisonment and Fines

Following are the standardized maximum prison sentences and fines that S 1 would authorize:

Sentences

Felonies	
Class A	life imprisonment
Class B	up to 30 years
Class C	up to 15 years
Class D	up to 7 years
Class E	up to 3 years
Misdemeanors	
Class A	up to 1 year
Class B	up to 6 months
Class C	up to 30 days
Infraction	up to 5 days

Fines

For Individuals	
Felony	up to $100,000
Misdemeanor	up to $10,000
Infraction	up to $1,000
For Organizations	
Felony	up to $500,000
Misdemeanor	up to $100,000
Infraction	up to $10,000

General Provisions (Chapter 20). As explained in the draft report, this chapter would introduce some of the general aspects of the sentencing process.

The first section, authorized sentences, would provide that offenders be sentenced using combinations of probation, fine or imprisonment to achieve the four basic purposes mention above. There is no direct counterpart of this section in current law. A second newly created sanction would provide that individuals found guilty of fraud and organizations found guilty of any offense could be ordered to advertise or inform persons affected by the conviction or financially interested in the matter.

Provision was also made for presentence reports and appellate review.

Probation (Chapter 21). As explained in the draft report, this chapter would consider probation as a form of sentence rather than taking the approach of current law which considers it a suspension of sentence. The chapter would define the terms of probation and the criteria to be used when considering probation and determining its length and conditions. Under this chapter, only one mandatory condition of probation would be set: that the defendant not commit another crime during the term. Otherwise, a court would be allowed to provide probation conditions that it judged would best help the rehabilitation of the defendant. S 1 would also provide that probation could be revoked for violation of the conditions of probation.

Fines (Chapter 22). This chapter would set the maximum monetary amounts for various fines, specify what criteria should be used for imposition and provide for later modification or remission of the fine based on changes in the defendant's financial condition. *(Box on imprisonment and fines, p. 2393)*

Fines for organizations would be set at higher levels than for individuals, the report stated, in recognition of a corporation's usually greater assets. The report also described an alternative fine which would be imposed on defendants who received financial gain from their offense or caused financial loss to their victims.

Imprisonment (Chapter 23). The first section of the chapter would establish the maximum authorized terms of imprisonment for the various classes of offenses.

In addition, this section would permit longer prison terms for special offenders and would specify the maximum periods convicted felons would be ineligible for parole.

Other sections in the chapter would establish the criteria used by courts to impose prison terms, extended prison terms and terms of parole ineligibility; the mechanics for dealing with persons convicted of multiple offenses; and whether to impose concurrent or consecutive sentences.

Death Sentence (Chapter 24). This chapter would establish the procedure for imposing capital punishment after conviction of certain crimes. The subcommittee's report stated that the procedure was devised to meet the constitutional requirements set up by the Supreme Court in *Furman v. Georgia.* The first section of the chapter would provide that the death penalty could only be imposed upon conviction of treason, sabotage or espionage in wartime or upon a conviction for certain aggravated forms of murder. The report explained further that the death sentence would be imposed only if one or more designated aggravating factors were present and all designated mitigating factors were absent. The second section of the chapter would provide for a two-stage ("bifurcated") trial to determine if the death penalty should be imposed. Under this procedure the issues of guilt and penalty are considered separately. The death penalty provisions have become very controversial. *(Box, p. 2388)*

Administration and Procedures

The fourth major part of Title I of S 1 would deal with procedural and administrative matters. The subcommittee's draft report stated that the nine chapters in this section would largely be a codification of existing law without the comprehensive revision made by the first three parts of S 1, although some innovations would be included.

Investigative and Law Enforcement Authority (Chapter 30). This chapter would designate the federal investigatory agencies that would have primary responsibility for detecting and investigating the commission of each federal crime. The chapter would also specify the duties and authority of those agencies to do such things as carry firearms and make arrests.

Ancillary Investigative Authority (Chapter 31). The first subchapter of this chapter would establish the circumstances and procedures under which state and local governments could engage in wiretapping with and without prior authorization. Although these provisions have become controversial, the draft report stated that most of them are unchanged from current law. *(See box on controversies, p. 2388)*

Other matters included in this chapter would concern the granting of immunity to witnesses in an official U.S. proceeding, provide for the protection of government witnesses and their immediate families, and authorize rewards for information about or the capture of persons charged with federal or state offenses.

Rendition and Extradition (Chapter 32). The first subchapter would concern the procedures for rendition—the arrest and return of fugitives—and would basically reenact current law, the draft report stated. The second subchapter would define the procedures for extradition—the surrender of fugitives between sovereign foreign countries—which have been substantially updated and rewritten, the report said.

Jurisdiction and Venue (Chapter 33). This chapter would delineate the jurisdiction of U.S. District Courts over federal offenses, establish the power of U.S. magistrates to try certain offenses, grant jurisdiction for the issuance of arrest warrants and establish the rules for determining the place of a trial or grand jury inquiry.

Appointment of Counsel for Indigent Defendants (Chapter 34). This chapter would establish procedures for appointing counsel for indigent defendants, create guidelines for payment of such counsel and offer alternative plans for establishing full-time appointed defense counsel.

Release and Confinement Pending Judicial Determination (Chapter 35). The first subchapter would include the authority and procedures for release of individuals before trial. The draft report stated that this subchapter would largely carry forward the provisions of the Bail Reform Act of 1966, as amended. The second subchapter would continue provisions of present law concerning confinement of a person who has been arrested but not yet tried and convicted.

Disposition of Juvenile or Incompetent Offenders (Chapter 36). Procedural provisions for the resolution of offenses committed by juveniles and mental incompetents would be linked in this chapter, the draft report explained, because neither group can be accorded the normal treatment given to accused defendants in a criminal trial. The first subchapter would define the procedures for the treatment of juvenile delinquents—persons under 21 years of age charged with a federal crime. The committee explained that S 1 basically would codify current federal law, including the procedural changes adopted in the Juvenile Justice and Delinquency Prevention Act of 1974 (PL 93-445). *(1974 Almanac p. 278)*

Unlike existing law, the report stated, the second subchapter would establish comprehensive procedures for handling mentally incompetent offenders from the pretrial stage to the time of release from custody. New to federal law, the report explained, would be a provision for a civil commitment procedure for individuals found innocent of federal wrong-doing by reason of insanity. Such commitment procedures are currently available only under state law.

Pretrial and Trial Procedure, Evidence and Appellate Review (Chapter 37). The first subchapter would establish the rules governing pretrial and trial procedure in federal criminal cases, the draft report stated, including giving the Supreme Court authority to prescribe amendments to the Federal Rules of Criminal Procedure.

The second subchapter would establish rules governing the admissibility of evidence in federal criminal cases. Besides authorizing the Supreme Court to prescribe

amendments to the Federal Rules of Evidence, the report stated, the subchapter would contain specific provisions concerning the admissibility of confessions and eyewitness testimony and admissibility of evidence in sentencing proceedings.

The third subchapter would establish the basic rules for appellate review of lower court decisions under the new code. It would establish a new limited system of appellate review of federal criminal sentences involving felonies. The report stated that appellate review of sentences would not be an automatic right, but would be dependent on review of a petition filed with the court of appeals, and was intended only to correct clearly unreasonable sentences. The granting of petitions for review of a death sentence would be required and given priority over all other cases.

Post-Sentence Administration (Chapter 38). This chapter, the draft report explained, would establish the procedures for administering and implementing the sentences imposed in Part II of S 1. The mechanics of probation, payment of fines, imprisonment, parole and administration of the death sentence would all be included. The subchapter on fines, the report explained, was designed to make the government more efficient in collecting fines from criminal defendants. A new procedure would be established which would treat uncollected fines as federal liens. It would be patterned on the procedures used for uncollected federal taxes.

The parole provisions in S 1 would reflect congressional action on HR 5727, the Parole Reorganization Act of 1975, now in conference. *(Weekly Report p. 2130)*

Civil Proceedings

The fifth part of S 1 would consist of two chapters and would provide for supplementary civil proceedings in connection with certain criminal matters.

Public Civil Proceedings (Chapter 40). As explained in the draft report, chapter 40 would give law enforcement authorities greater flexibility to fight crime. It would authorize civil forfeiture proceedings against property use, intended for use, or possessed in the commission of certain specified offenses. The chapter would also make available procedures to restrain racketeering and would authorize the Attorney General to seek an injunction against acts which constitute or could constitute a fraudulent scheme, as defined in chapter 17.

Ancillary Private Civil Remedies (Chapter 41). This chapter would provide a civil cause for action for persons whose business or property were damaged by racketeering activities or who had been illegally wiretapped. It would also include a new provision to provide compensation for victims of federal crimes which involved bodily injury or death and which caused financial stress. The draft report explained that claims would be filed with a Victims' Compensation Board against a revolving fund to be established in the United States Treasury. The fund would be supported through the increased fines authorized by S 1, dividends from the Prison Industries Fund and private contributions.

Titles II and III

As reported by the Criminal Laws Subcommittee, Title II of S 1 would consist of technical and conforming amendments for transferring important criminal provisions into Title 18 from other titles of the U.S. Code and moving minor provisions out of Title 18 into other titles.

Title III of the bill would contain general provisions. A severability clause would provide that any provision found to be invalid would not affect the validity of the remaining provisions. Title III would also make S 1 effective one year after the date of enactment.

Outlook

By informal agreement, the 753-page bill, the 1,200-plus draft report and extra memoranda were to rest without action in the Judiciary Committee for perhaps as long as four weeks after subcommittee approval. This was designed to give committee members time to become more familiar with the bill.

Sen. Hruska told Congressional Quarterly he expected at least six weeks of mark-up following that. Both McClellan and Hruska have pledged that they will be amenable to compromise. Hruska predicted that after the mark-up "it will be reported and placed on the schedule quickly and debated. Then we will send it to the House."

The House Judiciary Subcommittee on Criminal Justice told Congressional Quarterly that it plans to defer action on criminal code reform until after the Senate completes action on S 1. A subcommittee aide indicated that lengthy hearings on the two bills (HR 333, HR 3907) pending before the subcommittee were expected to begin within two weeks of Senate passage of S 1. HR 3907 is identical to S 1 as introduced in 1975, while HR 333 is based on recommendations of the Brown commission.

Such a tentative schedule indicates that any floor action in either the Senate or the House would not occur until the second session of the 94th Congress. That would mean that voting on the first federal criminal code in American history would occur in 1976—the year of the bicentennial and a presidential election. ■

—By Mary Link

CRIME AND JUSTICE NOTES

Gun Control

The House Judiciary Subcommittee on Crime Nov. 4-6 began to write new gun control legislation.

House action on gun control was considered unlikely in 1975 after the subcommittee Oct. 29 voted 6-1 to refuse to consider as a framework a compromise proposal by Rep. Robert McClory (R Ill.). *(Weekly Report p. 2032)*

The following day the subcommittee also voted 6-1 to reject a very strong gun control measure offered by Subcommittee Chairman John Conyers Jr. (D Mich.) to ban the manufacture, sale and possession of pistols. ■

District Judgeships

A bill to establish 45 additional district court judgeships (S 287), reported Sept. 24, has not yet been scheduled for Senate debate. When queried about this on the Senate floor Oct. 30, Senate Majority Whip Robert C. Byrd (D W.Va.) said action would be scheduled "if agreement can be worked out to facilitate action on the measure once it is on the Senate floor." William V. Roth Jr. (R Del.) has proposed an amendment which would remove jurisdiction over busing from lower federal courts. *(Weekly Report p. 2814, 2130)* ■